IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10075 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHUPATBHAI @ TALWAR BACHUBHAI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10075 of 2003

MR MM TIRMIZI for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 08/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the District Magistrate, Bhavnagar on

12.5.2003 under the exercise of powers under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds placed on record and as served upon the petitioner reveal that the detaining authority taken into consideration four offences against the petitioner under sec. 382, 435, 436, 295, 147, 148, 149, 427 and 118 of IPC on 1.3.2002, 2.10.2002, 23.12.2002 and 18.4.2003. The detaining authority has also taken into consideration four in-camera statements recorded by the sponsoring authority on 30.4.2003 and verified by the S.D.P.O., Bhavnagar on the same date and again verified by the detaining authority on 8.5.2003. The four statements revealed the unreported incidents occurred on 15 days earlier, one month and half months earlier, nine months earlier and 20 days earlier before the recording of the statements of respective witnesses. From the above, the order impugned came to be passed against the petitioner.

Heard ld. advocate Ms. Qureshi for Mr MM Tirmizi for the petitioner and ld. AGP Mr Chauhan for the respondents. The affidavit in reply filed by the detaining authority as taken on record is also taken into consideration.

Out of various grounds raised on behalf of the petitioner and controverted by ld. AGP, it appears from the rival contentions that the matter can be disposed of on the ground whether the right of the petitioner to have his representation against the order to be decided at the earliest. It is contended that the petitioner forwarded his representation against the order on 10.6.2003, however, the detaining authority in para-10 of the affidavit in reply states that the said representation was immediately forwarded to the State Government on 17.6.2003 because, thereafter, the State Government would decide the representation. On verifying the record, it is found that the representation of the petitioner which was dated 10.6.2003 was duly received by the detaining authority on 13.6.2003, however, in the affidavit in reply, there is no explanation for the period elapsed during 14.6.2003, 15.6.2003 and 16.6.2003 in forwarding the representation to the Government by the detaining authority. The delay of one day in deciding the representation is fatal to the order under detention law. The further detention of the petitioner on this ground alone is bad in law. Therefore, the order impugned is

required to be set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 12.5.2003 by the District Magistrate, Bhavnagar under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS Permitted.

(J.R. VORA, J.)

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